

Paykin Krieg & Adams, LLP  
2500 Westchester Ave., Ste 107  
Purchase, N.Y. 10577  
Tel: (212) 725-4423

David A. Schrader, Partner  
Paykin Krieg & Adams, LLP  
NY & NJ Bars  
Email: [dschrader@PKA-law.com](mailto:dschrader@PKA-law.com)  
Direct: 347-879-2345

September 20, 2023

**ECF**

Hon. Julien Xavier Neals, U.S.D.J.  
MLK Courtroom 5D  
United States District Court, D.N.J.  
U.S. Post Office & Courthouse  
1 Federal Square  
Newark, New Jersey 07101-0999

Re: Honig v. Cohen  
Civil Action No. 2:23-cv-11104-JXN-JBC  
Letter Motion Seeking Pre-Motion Conference for Motion to Dismiss

Dear Judge Neals:

This law firm represents defendants Gregory Cohen and Greg Cohen Promotions, LLC in the above matter. We submit this letter pursuant to Your Honor's Individual Rules to request a pre-motion conference for leave to file a motion to dismiss for lack of subject matter jurisdiction. We have had several communications with plaintiffs' counsel and provided them with documentation establishing that there is no diversity jurisdiction (no diverse citizenship between the parties). Notwithstanding, they have refused to dismiss the case prompting me to seek intervention from the Court in lieu of the filing of an answer. We are assessing whether a Rule 11 Sanctions motion is also appropriate.



As Your Honor is aware, diversity jurisdiction requires complete diversity of citizenship between the parties. “Complete diversity requires that, in cases with multiple plaintiffs or multiple defendants, no plaintiff be a citizen of the same state as any defendant.” *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d at 419 citing *Exxon Mobil Corp. v. Allapattah Svcs. Inc.*, 545 U.S. 546, 553, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005); and *Kaufman v. Allstate N.J. Insur. Co.*, 561 F.3d 144, 148 (3d Cir.2009). The citizenship of a limited liability company is determined by its members and is determined by the citizenship of all the states of its members. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 34 (3d Cir. 2018).

Here the plaintiffs appear to be citizens of Florida. Notably, plaintiff Barry Honig has only alleged his “residence” in the Complaint - and not his citizenship – a further defect with the jurisdictional allegations. [ECF 1 at para 7]. A party asserting jurisdiction must plead citizenship distinctly and affirmatively; allegations of residence are not enough. *See, e.g., Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1238 (10th Cir. 2015).

Notwithstanding, the corporate plaintiff is clearly a citizen of Florida. [ECF 1 at para 8]

The defendant Greg Cohen Promotions, LLC is a limited liability company with two members that are citizens of the State of Florida. As such, there is no diversity of citizenship – and thus, also no subject matter jurisdiction over this matter.

Even arguendo were their diversity jurisdiction, which there is not, the subject matter of this lawsuit involves a dispute arising under a November 2019 Standstill Agreement between plaintiffs Barry Honig and GRQ Consultants, on the one hand, and defendants Greg Cohen Promotions and Greg Cohen, on the other hand (the “Standstill Agreement”). The Standstill



Agreement governs the terms of repayment of debt allegedly owing to plaintiffs in the Complaint. The Standstill Agreement expressly sets exclusive jurisdiction in New York State courts for any disputes arising under the agreement. Here, since there is no federal jurisdiction, any claims arising from the Standstill Agreement would be required to be filed in New York State Supreme Court.

I have brought this matter to the attention of plaintiffs' counsel and have requested that this matter be dismissed. Plaintiffs have refused and appear to prefer to waste the time of the Court and the parties. We respectfully request a pre-motion conference to address these matters and to obtain permission to file an appropriate motion.

Respectfully Submitted,

s/ David A. Schrader

David A. Schrader

cc: all counsel (by ECF)